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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,147

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EXAMINER

NATARAJAN, MEERA

ART UNIT

PAPER NUMBER

1643

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,147	Applicant(s) VOLLMERS ET AL.	
	Examiner MEERA NATARAJAN	Art Unit 1643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-11 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/09/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, Claims 3-6 and newly added claims 29-31 (see objection below regarding claim numbering) in the reply filed on 09/09/2008 is acknowledged.
2. Claims 7-11 and newly added claim 31 (see objection below regarding claim numbering) are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 09/09/2008.
3. Claims 3-6 and 29-30 will be examined on the merits.

Priority

4. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 11/13/2003 and the certified copy of the 10352977.2 application submitted on 05/12/2006. The effective filing date for the instant application is 11/13/2003.

Information Disclosure Statement

5. The references cited in the Information Disclosure Statement (IDS) on 09/09/2008 have been considered by the examiner.

Claim Objections

6. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Claim number "30" is recited twice; the second Claim 30 has been renumbered as Claim 31 and stands withdrawn as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 3-6 and 29-30 are rejected under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and failing to provide an enabling disclosure without complete evidence either that the claimed biological materials are known and readily available to the public or complete evidence of the deposit of the biological materials.

9. The specification lacks deposit information for the deposit of hybridoma cell line with accession number DSM ACC2625. It is not clear that the hybridoma recited in the claims are known and publicly available or can be reproducibly isolated from nature without undue experimentation. Because one of ordinary skill in the art could not be

Art Unit: 1643

assured of the ability to practice the invention as claimed in the absence of the availability of the claimed hybridoma, a suitable deposit of the hybridoma, evidence of public availability of the claimed hybridoma or evidence of the reproducibility without undue experimentation of the claimed hybridoma, is required.

10. If the deposit is made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by applicant or assignees or a statement by an attorney of record who has authority and control over the conditions of deposit over his or her signature and registration number stating that the deposit of DSM ACC2625 has been accepted by an International Depository Authority under the provisions of the Budapest Treaty and that all restrictions upon public access to the deposited material will be irrevocably removed upon the grant of a patent on this application. This requirement is necessary when deposits are made under the provisions of the Budapest Treaty as the Treaty leaves this specific matter to the discretion of each State. Applicant has stated on p.9 (lines 21-26) of the specification that the cell line that produces the SC-1 anti-idiotypic antibody was deposited on November 6, 2003 under the Budapest Treaty. However, the specification does not include the assurance "that all restrictions upon public access to the deposited material will be irrevocably removed upon the grant of a patent on this application."

11. If the deposit is not made under the provisions of the Budapest Treaty, then in order to certify that the deposits comply with the criteria set forth in 37 CFR 1.801-1.809 regarding availability and permanency of deposits, assurance of compliance is required. Such assurance may be in the form of an affidavit or declaration by applicants or

Art Unit: 1643

assignees or in the form of a statement by an attorney of record who has the authority and control over the conditions of deposit over his or her signature and registration number averring:

(a) during the pendency of this application, access to the deposits will be afforded to the Commissioner upon request:

(b) all restrictions upon the availability to the public of the deposited biological material will be irrevocably removed upon the granting of a patent on this application:

(c) the deposits will be maintained in a public depository for a period of at least thirty years from the date of deposit or for the enforceable life of the patent or for a period of five years after the date of the most recent request for the furnishing of a sample of the deposited biological material, whichever is longest; and

(d) the deposits will be replaced if they should become nonviable or non-replicable.

12. As an additional means for completing the record, applicant may submit a copy of the contract with the depository for deposit and maintenance of each deposit.

13. If a deposit is made after the effective filing date of the application for patent in the United States, a verified statement is required from a person in a position to corroborate that the biological material described in the specification as filed is the same as that deposited in the depository, stating that the deposited material is identical to the biological material described in the specification and was in the applicant's possession at the time the application was filed.

Applicant's attention is directed to In re Lundak, 773 F.2d. 1216, 227 USPQ 90 (CAFC 1985) and 37 CFR 1.801-1.809 for further information concerning deposit practice.

Closest Prior Art

14. The following is the closest prior art. Vollmers et al. (Oncology Reports, Vol. 5(1), pp.35-40, 1998 – Cited on IDS filed 09/09/2008, C08) disclose human monoclonal antibodies against SC-1 reduce stomach cancer growth *in vivo*, by inducing tumor-specific apoptosis. Vollmers et al. does not teach nor suggest making anti-idiotypic antibodies raised against the monoclonal SC-1 antibody nor discloses the hybridoma DSM ACC2625. Therefore the claims are free of the prior art.

Conclusion

15. Claims 3-6 and 29-30 are rejected.

16. No Claim is allowed.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEERA NATARAJAN whose telephone number is (571)270-3058. The examiner can normally be reached on Monday-Thursday, 9:30AM-7:00PM, ALT. Friday. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 1643

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meera Natarajan/

/Larry R. Helms/
Supervisory Patent Examiner, Art Unit 1643